



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2004

Ms. Claudia G. Arrieta
Thornton, Summers, Giechlin
Dunham & Brown, L.C.
10100 Reunion Place, Suite 300
San Antonio, Texas 78216-4186

OR2004-2756

Dear Ms. Arrieta:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199105.

Frio County (the "county"), which you represent, received a request for (1) any and all policies either written or unwritten that are applied or enforced in the county that describes a county employee's grievance process, (2) any and all personnel records of the county Tax Assessor-Collector's office including a named individual and his entire staff, (3) any and all memoranda, notes, and correspondence between the county and a named attorney regarding a specified lawsuit, (4) any and all contracts between the named attorney and the county for a specified time period, (5) any and all Commissioners Court agendas and minutes related to the hiring of the named attorney, (6) any and all Commissioners Court agendas and written records describing either of two named attorney's discussing the statutes of any and all cases involving these attorneys for a specified time period, (7) any and all Commissioners Court posted agendas and records that describe a specified lawsuit and any settlement recommendation, (8) any and all insurance policies currently being utilized to hire a specified law firm including billing and payment forms for a specified time period, (9) the names of all plaintiffs this firm represents to defend the county, (10) any and all state and/or federal law that grants authority to the county Tax Assessor-Collector to collect the funds for all taxing entities within the county, and (11) each and every person who is assigned a key to the county clerk's office, including those employees' personnel records. You indicate that you will release some responsive information which you do not claim to be excepted from

disclosure. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim.

We begin by noting that section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) of the Government Code requires a governmental body to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). As of the date of this letter, you have not provided this office with the information at issue or a copy or representative sample of the information that the county seeks to withhold. Consequently, you failed to submit the requisite information within the fifteen business day period mandated by section 552.301(e) of the Government Code.

Because the county failed to comply with the procedural requirements of section 552.301 with regard to the requested information, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The county must demonstrate a compelling interest in order to overcome the presumption that the information at issue is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You claim that the requested information is excepted under sections 552.101, 552.102, 552.103, 552.107, and 552.111 of the Government Code. Sections 552.103, 552.107, and 552.111 are discretionary exceptions intended to protect only the interests of the governmental body. *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (city's failure to meet 10-day deadline waived protections of sections 552.103 and 552.111). Therefore, sections 552.103, 552.107, and 552.111 do not provide compelling reasons to overcome the presumption of openness. Accordingly, we conclude that the county may not withhold the requested information under section 552.103, 552.107, or 552.111 of the Government Code.

Furthermore, although the county claims that the information at issue is excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code, exceptions which can provide compelling reasons for nondisclosure of requested information under section 552.302, we have no basis for concluding that the requested information is so

excepted under these exceptions to disclosure because the county failed to submit any portion of the information at issue to us for our review. Thus, we have no choice but to order the requested information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 199105

c: Ms. Ana Alaniz
P. O. Box 592
Pearsall, Texas 78061